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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2903 OF 2006

M/s.Asian CERC Information Services (I) Pvt. Ltd.....Petitioner

Vs.

Income Tax Officer, Ward 2(1)(1)....Respondent

Mr. Salil Kapoor with Mr. K. Goplal and Mr. Jitendra Singh i/b.Inter Asia Lawyers for Petitioners
Mr.Ashok Kotangale with Mr. Arun D. Nagarajan for the Respondents.

CORAM: F.I. REBELLO &
J.P.DEVADHAR,JJ.
DATED: 17TH JULY,2007

P.C.:

. The petitioners aggrieved by the notice dated 10th March, 2006 under Section 148 of the I.T. Act as also the order dated 29th November, 2006 rejecting their objections have preferred the present petition. In view of the order to be passed we need not go into the facts on all the issues involved. The notice was issued on 10th March, 2006. Pursuant to the request by the petitioners the reasons to believe, were communicated. The reasons recorded,that considering the judgment of the Rajasthan High Court in the case of CIT vs. Arawali Constructions Co. (P) Ltd. (259 ITR 30) the nature of the expenses incurred by the assessee

in a sum of Rs.62,79,638/- needs to be examined and is required to be capitalised. The learned Counsel then draws our attention to the communication dated 27th September, 2006 by the Assessing Officer addressed to the Senior Auditor Officer wherein the judgment of the Rajasthan High Court is sought to be distinguished and a view is taken that the said judgment would not apply to the facts of the petitioners case. This view taken by the Assessing Officer was endorsed by the Commissioner of Income Tax-II by communication dated 12th Octoer,, 2006 addressed to the Director, C/o. Principal Auditor, Central Audit and Accounts Department. It is, therefore, the contention of the petitioner that once the Assessing Officer was of the view that the judgment of the Rajasthan High Court was not applicable and in view of that the objections filed ought to have been accepted.

. The same Assessing Officer, who at the relevant time had addressed a letter to the Auditor to remove the Audit objections on understanding of the judgment of the Rajsthan High Court, was pleased to reject the objections as filed by the petitioner herein.

. We have gone through the said order. We find that while disposing of the objections the

Assessing Officer has not given any reason as to why the Assessing Officer had now come to the view, from the earlier view taken while addressing the letter to the auditor to remove the objections as to why the the judgment of the Rajasthan High Court which earlier in his opinion was not applicable, became applicable. It is possible that the Officer may have further re-considered the judgment, but some reasons ought to have been disclosed. In our opinion this discloses total non-application of mind on the part of the Assessing Officer.

3. In the light of that we are clearly of the view that the impugned communication dated 29th November, 2006 has to be set aside and is hereby set aside and the matter is remanded back to the Respondent No.1, to reconsider the matter denovo and according to law. If there be any adverse order against the petitioner that shall not be acted upon for a period of eight weeks from the date of communication of the same.

. Rule made absolute accordingly. There shall be no order as to costs.

(J.P.DEVADHAR, J.) **(F.I.REBELLO, J.)**